

REMARKS

Applicant requests further examination and reconsideration of the application in view of the following remarks.

1. Status of the Claims

Claims 1, 39 - 41 and 43 - 75 are pending in this application. Claims 67 and 68 have been amended. Support for the claim amendments can be found in the specification including, for example, as follows:

- claim 67, page 18, lines 25-26 through page 19, line 16;
 page 17, line 26 through page 18, line 6
 page 15, lines 5-23
- claim 68, page 18, lines 25-26 through page 19, line 16;
 page 17, line 26 through page 18, line 6
 page 15, lines 5-23

Claims 1, 39-41, and 43-75 were indicated as having allowable subject matter in the June 16, 2003 Office Action. Claims 39 and 41 were amended as to matters of form that do not affect claim scope.

2. Prior Art Rejections

The Examiner rejected Claims 67, 68, 72-73, and 75 under 35 U.S.C. 112, first paragraph and asserted the above claims contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most easily connected, to make and/or use the invention.

In particular, the Examiner asserts that while the powder material of the second edible food product (also referred to as "heat-absorbing material" in claims 72-73 and "protective curable powdered material" in claim 75) is disclosed in the specification, the disclosure does not teach what the powder material is nor what powder material to use

to obtain the claimed function. Thus, the Examiner concludes that one skilled in the art would not have known what powder material to use.

Applicant respectfully disagrees with the Examiner and traverses the above rejections. Applicant submits the specification fully discloses what is meant by the term "powder" as recited in claims 67, 68, 73, and 75. However, Applicant has amended claims 67 and 68 to further clarify the second edible food product of the present invention. In particular, claims 67 and 68 were amended to recite the edible food coating material comprises a powder that liquefies upon heating. Support for the amendments is found on page 18, lines 25 - 26 to page 19, line 16. Applicant submits the present application fully enables one skilled in the art to identify what the powder is and what form the powder may take such that one could practice and use the invention.

Applicant first directs the Examiner to page 18, lines 26-27, which states "...the second edible food comprises a powder..." Thus, as claimed, the second edible food product may be a dry powder, but the second edible food product need not be composed only of a powder. Thus, a powder may be included within a syrup mixture, suspension, slurry, or any other composition, for example.

In particular, Applicant directs the Examiner first to page 17, line 26 through page 18, line 6. In this section, there is disclosed a clear example of a second edible food coating material which comprises a powder (cocoa powder) dispersed within a slurry. As can be seen, this is an example where the powder is not merely in dry powder form. In this non-limiting example, a slurry tank was filled with liquid sucrose or water to prepare an initial mixture. Cocoa powder was then added to the mixture. The Examiner asserted the "[p]owder material usually does not become a liquid unless it is dissolved in a liquid and that the powder is soluble in the liquid." This is not correct, as the cocoa powder was added to a liquid to form a slurry, wherein the powder was dispersed but not solubilized in the liquid. Additionally, it is clear from the specification that the amended claims encompass embodiments wherein the powder is included

within a liquid mixture or other composition such as the above slurry, or alternatively is in the form of a dry powder as discussed on page 19, lines 20-22. And while the above example used cocoa powder, the specification makes it clear that other powder materials are contemplated as would be understood by one of ordinary skill in the art and may be used in the present invention.

On page 15, lines 5-23, the specification teaches the second edible food product may be selected from a material, or a composition of materials, which possesses sufficient physical properties and characteristics to so act in such a heat protective manner when the secondary coated hand-held food item is subjected to a temperature in the range of from about 35° C to about 350° C... It is clear on the bottom of page 15 line 24 through page 16 of the specification that one of the materials in the composition may be a powder coating that "liquefies upon heating and evaporates to absorb heat, thereby providing a protective effect."


One skilled in the art would know of powder coatings which could liquefy between 35° C to about 350° C and the preferred ranges in between which could then be formed into a thin film to maintain the integrity of the first edible food product. The example of a second edible coating powder which includes cocoa powder was given, but it is well known to those skilled in the art that other coatings which comprise a powder possess the same characteristics. For example, U.S. Patent No. 4,038,423, issued to Hayward et al. discloses a food bar having coating product which includes fat, sugar, and non-fat dry milk powder. The coating is heated to a temperature not over 120° F (48.8° C) such that the coating is liquefied and is then subsequently cooled. There are other coatings comprising powders known to one skilled in the art which can be liquefied at a temperature and re-solidified at another. There is no need for Applicant to recite every example of what is well known to one skilled in the art. "[N]ot everything necessary to practice the invention need be disclosed. In fact, what is well-known is best omitted." (MPEP 2164.08).

Furthermore, as mentioned above, the Examiner asserted "[p]owder material usually does not become a liquid unless it is dissolved in a liquid and that the powder is soluble in the liquid." The specification fully discloses a means of liquefying a powder by means other than dissolving the mixture. On page 23, line 21 through page 25, line 14, the specification recites that the "powder" of the second edible food product may be "cured." The specification teaches that the powder is heated in order to cure the product, and that through heating the product, the powder component liquefies. Thus, it is clear from the specification that there are other means of making the powder a liquid other than by dissolving it. Such powder that would melt and resolidify at the temperatures set forth in the specification are well known to those skilled in the art and again need not be recited herein. Applicant submits, the present application fully enables one skilled in the art to identify the claimed powder such that one could practice and use the invention.

CONCLUSION

In view of the foregoing, claims 1, 39 - 41 and 43 - 75 are allowable. An indication of allowance is solicited at an early date.

Respectfully submitted,


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